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In re Application of
SZU, et al.
Application No.: 09/744,289
PCT No.: PCT/US98/14976
Int. Filing Date: 20 July 1998
Priority Date: N/A
Attorney's Docket No.: 2026-4282US
For: VACCINES AGAINST ESCHERICHIA
COLI 0157 INFECTION

DECISION ON

PAPERS

UNDER 37 C.F.R. 1.42

This is a decision on applicants' "Response to Decision on Papers Under 37 CFR 1.42" filed 30 January 2002.

BACKGROUND

On 20 July 1998, applicants filed international application PCT/US98/14976. A Demand electing the United States was filed with the International Preliminary Examining Authority within nineteen months of the priority date. Accordingly, the deadline for submitting the basic national fee to prevent abandonment of the international application as to the United States expired at midnight of 22 January 2001 (20 January 2001 was a Saturday).

On 22 January 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 6 February 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors was required. This Notification set a one month extendable period for reply.

On 1 August 2001, applicants filed "Response to Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)," including, *inter alia*, two combined declarations and powers of attorney, a copy of the notification and a check in the amount of \$1890.00 for a five month extension. One declaration is numbered 1/3, 2/3, 3/3, 4/3 with signatures from the two joint inventors and identifies Yvonne Ageyman Konadu as the "third joint inventor" and "as heir to the estate of deceased inventor and applicant Edward Konadu." The second declaration is numbered 1/4, 2/4, 3/4, 4/4 and identifies the third joint inventor as Edward Konadu and Yvonne Ageyman Konadu as "representative and heir to the estate of deceased inventor Edward Konadu."

On 30 January 2002, applicants filed the instant "Response to Decision on Papers Under 37 CFR 1.42," accompanied by, *inter alia*, a new declaration.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 C.F.R. 1.42.


The current declaration is signed by inventors Shousun Chen Szu and John B. Robbins and provides their citizenships, residences and mailing addresses. Additionally, the new declaration identifies Ms. Yvonne Ageyman Konadu as the legal representative of deceased inventor Edward Konadu and provides her citizenship, residence and mailing address in addition to the citizenship and last known mailing address and residence of Edward Konadu. The declaration complies with 37 CFR 1.42.

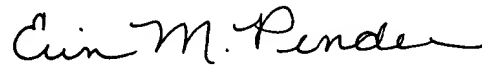
CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is GRANTED.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing consistent with this decision. The application has an international filing date of 20 July 1998 under 35 U.S.C. §363 and a date of 30 January 2002 under 35 U.S.C. §371.


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